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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: LIN 00 185 53990

OFFICE: NEBRASKA SERVICE CENTER

DATE: 6 MAR 2002

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a business engaged in the marketing of art works and crafts manufactured by Russian craftsmen. The petitioner seeks to employ the beneficiary in the United States as its manager and director of operations. The director determined that the petitioner was considered a new office for immigration purposes but that the petitioner had not established that it would be able to support an executive or managerial position within one year of approval of the petition.

On appeal, counsel for the petitioner asserts that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary's duties are managerial and executive in nature.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The petitioner was incorporated in the state of Oregon in December of 1999 and the petition was filed in June of 2000. The petition requests an L-1A nonimmigrant visa for the beneficiary in order to set up a new office for the petitioner in Oregon. The petitioner qualifies under the new office definition in 8 C.F.R. 214.2(1)(1)(ii) that states in pertinent part that:

- (F) New office means an organization which has been doing business in the United States through a parent,

branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to comply with the requirements set forth in 8 C.F.R. 214.2(1)(3)(v).

8 C.F.R. 214.2(1)(3)(v) states that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner initially submitted, among other documents, its Articles of Incorporation, a lease agreement, the incorporating documents of its parent company and a statement from the president of the parent company. The statement included brief descriptions of the petitioner and the foreign entity and a brief description of the beneficiary's qualifications.

The director requested that the petitioner clarify whether it was requesting that the beneficiary enter the United States as an individual with specialized knowledge or as an individual whose duties were managerial or executive in nature. The director also requested that the petitioner provide organizational charts for

both the overseas and the United States entity and a detailed description of the beneficiary's day-to-day tasks for the foreign entity and the United States entity.

In reply, the petitioner submitted an organizational diagram of the foreign entity and itself and a description of the beneficiary's duties for the foreign entity. The organizational chart indicated the beneficiary was in contact with a legal advisor, financial advisor, marketing advisor and an individual in public relations. The beneficiary was also shown to supervise three gallery assistants/volunteers. The petitioner also submitted the following description of the beneficiary's weekly schedule:

1. Administrative/Managerial (80%)
Conclude agreements for lease of space, facilities security, telephone, insurance coverage.
Procure goods from Russian parent company, arrange transportation.
Assess the value of fine art work by contemporary Russian artists.
Certify authenticity of original art work by each artist represented.
Acquire display stands & equipment, order business cards & brochures.
Prepare showroom & window display.
Mount and rotate exhibits.
Coordinate public relations, advertising and marketing.
Provide customer service in the gallery.
Process commissions for work by artists and artisans in Russia.
Supervise volunteer assistants in the gallery.
2. Administrative/Financial (10%)
Arrange for bank services, credit lines, accounts summary, etc.
Develop a credit system for fine art sales.
Manage sales, bookkeeping and inventory accounting; prepare quarterly reports.
3. Administrative/Cultural (10%)
Present lectures on the history of Russian artistic traditions, origins of handcrafts.
Provide information on individual artists represented, the trend or school to which each belongs, where they have previously exhibited.
Exhibit art work jointly or in concert with local museum exhibits and the Portland-Khabarovsk Sister Association.
Give talks on preservation of Russian culture, invite students to exhibits of Russian art.
Conduct programs to educate Americans on Russian

culture in general and the cultural expressions of the Russian Far East, including the art of native peoples.

The director determined that the evidence submitted did not establish that the beneficiary possessed specialized knowledge or that the beneficiary's duties would be primarily executive or managerial in nature. The director also determined that the petitioner had failed to establish that it would support an executive, managerial or specialized knowledge position within one year of the potential approval of the petition.

Counsel for the petitioner requested that the evidence submitted by the petitioner be reconsidered. The director upon reconsideration determined that the petitioner had not submitted sufficient evidence to establish that it would support a managerial or executive position within one year of approval of the petition.

On appeal, counsel for the petitioner asserts that the beneficiary is acting in a managerial capacity. Counsel states that the beneficiary, "negotiates and signs agreements, analyzes the United States market for objects of applied art and paintings, procures objects of art from Russia, coordinates public relations, and supervises several volunteer assistants in the Russian gallery." Counsel also indicates that, "[a]s the Russian Gallery evolves into a full scale operation, the beneficiary will assume the responsibilities of directing and managing the gallery." Counsel further states that, "[t]he beneficiary's duties also will include managing and supervising subordinates," and "as the company develops, at least three full time paid positions will be created, including that of a sales clerk, an accountant and a managerial assistant." Counsel concludes by stating that, "[a]lthough [the beneficiary] is currently performing some tasks that are not inherently managerial in nature while the new office is being established, she will be relieved of those tasks in the near future."

Counsel's assertions are not persuasive. The petitioner has not provided sufficient information that it will develop into an organization that will support a managerial or executive position within one year. The description of the beneficiary's job duties shows that she will be performing the necessary tasks to run the business rather than directing or managing the organization. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has not provided a detailed business plan, nor outlined in detail the organization's goals and hiring plan. Counsel's assertion that the petitioner plans to hire three full time paid positions to relieve the beneficiary from performing non-qualifying tasks is not persuasive. The assertions of counsel do not constitute

evidence. Matter of Obaigbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, the record does not provide evidence that the foreign entity has invested sufficient funds in the petitioner and has the ability to remunerate the beneficiary at the level of a manager or an executive. The foreign entity's bank statement does not reveal the amount of money the foreign entity holds and is willing to invest in the petitioner until the petitioner is able to commence doing business in a regular and systematic fashion.

On review of the complete record, the petitioner has not sufficiently established the scope of the business and thus has not established that the petitioner will support a managerial or executive position within one year of the potential approval of the petition.

Beyond the decision of the director, the petitioner has not sufficiently established that a qualifying relationship exists between itself and the foreign entity. The petitioner has not provided sufficient evidence that it is owned by the foreign entity. The petitioner has not submitted evidence of the purchase and transfer of funds for the purchase of the petitioner's stock by the foreign entity. Because the appeal is dismissed for the reason stated above, this issue need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.